

### **REMARKS**

The Office Action dated June 3, 2005 did not specify the shortened statutory period for reply. The Applicants note with appreciation the telephone interview that was conducted on June 16, 2005 with the Supervisory Patent Examiner ("SPE") Kristine Kincaid. As evidenced by the Interview Summary dated July 22, 2005, the Applicants and the SPE have "agreed that the office action should have included a three-month statutory period.

Claims 1-18 remain in this application, all of which have been rejected.

Claims 1-4, 6, 9-12, and 14-17 have been rejected under 35 U.S.C. § 103(a) ("§ 103") as being unpatentable over U.S. Patent Number 6,038,516 ("Alexander") in view of U.S. Patent Number 6,374,145 ("Lignoul"), U.S. Patent Number 6,804,792 ("Nishikawa"), and U.S. Patent Number 6,076,169 ("Lee"). Claims 2 and 10 have been rejected under § 103 as being unpatentable over Alexander in view of Lignoul, Nishikawa, Lee, and further in view of U.S. Patent No. 6,523,122. Claims 5, 13, and 18 have been rejected under § 103 as being unpatentable over Alexander in view of Lignoul, Nishikawa, Lee, and further in view of U.S. Patent Number 6,560,711. Claim 7 has been rejected under § 103 as being unpatentable over Alexander in view of Lignoul, Nishikawa, Lee, Shpater, and further in view of U.S. Patent Number 5,339,104.

### **Nishikawa is Not Prior Art**

Claims 1, 9, and 14 are the only independent claims. Each one of claims 1, 9, and 14 has been rejected over a combination of patents that includes Nishikawa. However, the Examiner has failed to make a *prima facie* case of obviousness because Nishikawa is not prior art.

"Before answering *Graham's* 'content' inquiry, it must be known whether a patent or publication is in the prior art under 35 U.S.C. § 102." Manual of Patent Examining Procedure, Eighth Edition ("MPEP"), Incorporating Revision No. 2, May 2004, § 2141.01(I), page 2100-121 (quoting *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568 (Fed. Cir.), *cert. denied*, 481 U.S. 1052 (1987)). "A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issued date." *Id.*

Therefore, unless a reference is prior art under 35 U.S.C. § 102 (“§ 102”) it cannot be used to determine whether a claim is obvious under § 103.

The relevant dates of Nishikawa and the filing date of the current application are listed below in chronological order:

- |  |   |                         |
|--|---|-------------------------|
| 1. Japanese Filing Date of Nishikawa         | - | February 10, 2000       |
| 2. <b>Filing Date of Current Application</b> | - | <b>January 18, 2001</b> |
| 3. U.S. Filing Date of Nishikawa             | - | February 9, 2001        |
| 4. Publication Date of Nishikawa             | - | August 16, 2001         |
| 5. Issuance Date of Nishikawa                | - | October 12, 2004        |

The only date of Nishikawa that precedes the filing date of the current application is the Japanese filing date, *i.e.*, February 10, 2000.

Nishikawa is not prior art under any section of § 102. For example, “35 U.S.C. 102(e) is explicitly limited to certain references ‘filed in the United States before the invention thereof by the applicant’ (emphasis added).” MPEP, Incorporating Revision No. 2, May 2004, § 2136.03(I), page 2100-98. “Foreign applications’ filing dates that are claimed (via 35 U.S.C. 119(a) – (d), (f) or 365(a)) in applications, which have been published as U.S. or WIPO application publications or patented in the U.S. may not be used as 35 U.S.C. 102(e) dates for prior art purposes.” *Id.* Thus, the Japanese filing date of Nishikawa of February 10, 2000, which is the only date that precedes the filing date of the present application, cannot be used for § 102(e) prior art purposes. Similarly, it is self-evident that Nishikawa does not qualify as prior art under any of the other sections of § 102, *i.e.*, § 102(a)-(d), (f), and (g).

Accordingly, claims 1, 9, and 14, as well as all the claims dependent thereon, are allowable at least because Nishikawa is not a prior art reference.

### **Response to Arguments**

In addition, claims 1, 9, and 14, as well as all the claims dependent thereon are allowable at least based on the applicable arguments presented in the Amendment after Final, which was submitted on December 1, 2004. In the Response to Arguments section of the Office Action, the Examiner has dismissed all arguments as “moot in view of new ground(s) of rejections.”

Regarding the Applicants' previous argument that there is no suggestion or motivation to combine Alexander and Lignoul, the Examiner has alleged that "both systems of Alexander and Lignoul require the use of a display device, and thus any improvement on the use of Lignoul's display device would be applicable to Alexander's." Office Action, page 8. Alexander is directed to displaying of current load parameters. In contradistinction, Lignoul is generally directed to screen savers and/or password protection programs that are used in computer systems. Lignoul is not directed to displaying of information. Accordingly, one of ordinary skill in the art would not look at Lignoul, which teaches the activation of software programs in a computer system, to further improve Alexander's display system of load parameters.

Accordingly, claims 1, 9, and 14, as well as all the claims dependent thereon, are allowable at least because there is no suggestion or motivation to combine Alexander and Lignoul.

### **Conclusion**

Reconsideration of this application in light of the foregoing remarks is respectfully requested. It is believed that no fee is presently due; however, should any additional fees be required (except for payment of the issue fee), the Commissioner is authorized to deduct the fees from Jenkins & Gilchrist, P.C. Deposit Account No. 10-0447, Order No. 47181-00232.

Respectfully submitted,

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By



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